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HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Criminal Appeal No.557 of 2003

APPELLANT: Nohar Kewat,
S/o Dayaram Kewat
Aged about 40 years,
R/o Rampur, Khatutola,
P.S. Chichola, Churiya,
District Rajnandgaon, (C.G.),
Presently R/o village Dhiri,
Chakradhari Itta Bhatta,
P.S. Somni, District Rajnandgaon.

-Versus-

RESPONDENT: State of Chhattisgarh,
Through P.S. Somni,
District- Rajnandgaon (C.G.)

JUDGMENT FOR CONSI[illegible]

Sd/-
L.C.BHADOO
Judge

HON'BLE THE CHIEF JUSTICE

9 August

Sd/-
Chief Justice

POST FOR JUDGMENT [illegible]

Sd/-
JUDGE

3rd July, 2003

(21)

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District- Rajnandgaon (C.G.)

Shri Anup Majumdar, counsel for the appellant.
Shri Prafulla Bharat, Panel Lawyer for the State/respondent.

Division Bench: - **Hon'ble Shri K.H.N. Kuranga, C.J.**
and Hon'ble Shri L.C. Bhadoo, J.

JUDGMENT
(Delivered on _____ July, 2003)

The following judgment of the Court was delivered by *Justice L.C. Bhadoo*: -

1. The accused / appellant has preferred this criminal appeal under Section 374(2) of the Cr.P.C., being aggrieved by the judgment of conviction and sentence dated 17-9-2002 passed in S.T. No. 35/2002 by the 1st Additional Sessions Judge Rajnangdaon, by which the learned Additional Sessions Judge after holding the accused / appellant guilty for the offences punishable under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs. 200/-, in default of payment of fine to further undergo R.I. for one month.

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2. Briefly stated the prosecution story is that Brijlal Kewat's wife had died in the year 2000 and he was residing in one room of brick kiln with his daughter Manisha. The daughter of the accused namely, Dhan Bai, aged about 16-17 years, used to come to the house of Brijlal. They developed physical relations. Accused Nohar Kewat the father of Dhan Bai came to know about this, therefore, he stopped Dhan Bai from going to Brijlal's house. Dhan Bai met Brijlal Kewat on 31st March 2001 i.e. Saturday in the market of brick kiln and during that meeting Brijlal gifted a bra to Dhan bai which came to the knowledge of the accused and he became angry and with the intention to take revenge he planned to murder Brijlal and in furtherance of the same on 1st April 2001 i.e. Sunday he invited the deceased Brijlal for dinner. When the deceased Brijlal came to the house of the accused he offered liquor and Namkeen, the accused also consumed the liquor. The Lota (metal vessel meant for keeping water) in which water was kept for mixing with liquor fell down and the water splashed. On this the accused took the Lota to other room and again put the water mixed with poison in the Lota and the accused after putting the liquor in the Tumbler of the deceased put the water also from Lota which was mixed with poison, but he did not put that water in his liquor. When the deceased consumed that liquor he told the accused that some peculiar smell is coming out. On this the accused said that there is nothing, and the deceased consumed the whole liquor in the tumbler. The accused offered more liquor to the deceased but he refused to take, on which the accused slapped him and asked him to take more liquor. The accused once more mixed the water which was mixed with

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poison in the liquor. Thereafter the deceased refused to take more liquor and again the accused slapped him and said that now you will reach the correct place. At that time 2 to 4 persons came, and the accused informed them that deceased Brijlal has consumed excessive liquor. Thereafter the deceased went to his house and without taking meal he had gone to sleep. In the morning at about 4.00 a.m. Brijlal started writhing in pain, froth started coming out from his mouth and he started vomiting. On this, his daughter Manisha went to Ramsharan, the clerk of the owner of the brick kiln, and informed him about the condition of her father. On this Ramsharan provided a truck in which Brijlal was taken to the District Hospital, Durg and there the doctor declared him dead.

3. The merg intimation was given to the Police Station and the Police after registering the merg intimation 0/2001, (Ex.-P/6) sent requisition for the postmortem on the body of deceased Brijlal. The Doctor conducted the postmortem and prepared the report Ex.-P/8. The doctor opined that the cause of the death was asphyxia on account of consumption of poison. The viscera were preserved by the doctor and sent to the Forensic Science Laboratory, Sagar from where the report Ex.-P/21 was received in which it was opined that in the viscera Rogor (Organo Phosphorous) insecticide and Ethyl Alcohol were found present. The F.I.R., Ex.-P/19, was registered in the Police Station Somni. The site map of the place of the incident was prepared on 26th January 2002. The accused gave information under Section 27 of the Evidence Act, Ex.-P/14 and in pursuance of that information one aluminium bottle containing half bottle liquid was

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recovered after digging the earth from near Babool tree which was seized under Ex.-P/15. The police after completing the investigation filed the challan against the accused / appellant. The case was committed to the Sessions Judge, Rajnandgaon from where the 1st Additional Sessions Judge received it on transfer. The learned Additional Sessions Judge after perusing the records and hearing the learned counsel for the accused framed the charge under Section 302 of the I.P.C. against the accused / appellant. The accused denied the charge and asked for trial.

4. The prosecution in order to prove the offence against the accused / appellant examined in all 16 witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C. in which the accused admitted that he was working in the brick kiln and the deceased was also working there, but he refused that the deceased consumed liquor in his house and stated it is also false that he mixed poison in the liquor. However, he refused that there was any relation between the deceased and his daughter Dhan Bai. He pleaded ignorance about the postmortem and the cause of the death of the deceased. However, he admitted that on knowing about the death of Brijlal from the newspaper his daughter Dhan Bai consumed some substance mistakenly thinking the same as sweet beverage and she was admitted in the hospital and was in the hospital for 2-3 days. He pleaded ignorance as to whether Dhan Bai consumed the poison, as he had not gone to the hospital and ultimately he stated that the daughter of the deceased Manisha deposed against him on account of old enmity and he has been implicated in the false case. He stated that he is innocent. The

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learned Additional Sessions Judge after hearing the counsel for the accused / appellant and the Public Prosecutor convicted and sentenced him as mentioned above.

5. We have heard Shri Anup Majumdar, the learned counsel for the appellant and Shri Prafulla Bharat, learned Panel Lawyer for the State / respondent.

6. As far as the question of the nature of the death of deceased Brijlal as homicidal is concerned, the learned counsel for the accused / appellant has not disputed. PW-8 doctor Ashok Soni said that he conducted the postmortem on the dead body of Brijlal. On opening the stomach of the deceased foul smell was coming out. Kidney and lever were congested and the yellow liquid was present in the stomach. The viscera was preserved and the same was sent to police for getting it chemically examined. The cause of the death was asphyxia due to consumption of the organo phosphorous insecticide. The report, Ex.-P./21 also shows that in the viscera Rogor (organo phospharous) insecticide and the ethyl alcohol were present. Therefore, in view of the above, it stands proved that deceased Brijlal died on account of consumption of the insecticide namely organo phosphorous, and the nature of the death of the deceased was homicidal.

7. Now coming to the question of involvement of the accused by administering poison to the deceased is concerned, the whole case rests upon circumstantial evidence and in order to prove the offence against the accused based on circumstantial evidence it is settled law that that the Court can record conviction, but it must satisfy itself that the circumstances from which an inference of guilt could be

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drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

8. Now we shall examine the evidence available on the record by which the prosecution has sought to prove the offence against the appellant and his involvement in administering the poison to the deceased. The prosecution has relied on the following circumstances:-

(i) that in the intervening night of 1st April 2001 and 2nd April 2001, the accused invited the deceased at his residence for dinner and there the deceased consumed the liquor and in that the accused administered the poison to the deceased.

(ii) the deceased made dying declaration before his daughter Manisha that the accused forced him to consume liquor mixed with poison and on account of that his condition has worsen.

9. Now coming to the evidence, the trial Court has relied on the deposition of PW-13 Dhan Bai. Even though this witness has been declared hostile, but in para-5 of her cross-examination by the Public Prosecutor, she has stated that in the fateful night deceased Brijlal came to their house and he consumed liquor with her father and in the morning he died. But at the same time she has stated that it is incorrect to say that her father mixed poison in the water which was put in the liquor. She has further stated that it is true that her father informed the people of the vicinity that the deceased has consumed excessive liquor. Relying on this evidence, the learned Additional Sessions Judge has held that it is established that the

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deceased consumed liquor at the residence of the accused. But the accused has denied in his statement under Section 313 of the Cr.P.C. that the deceased consumed liquor at his residence. PW-13 Dhan Bai is the daughter of the accused. There is no reason to disbelieve her evidence and there is no reason for her to depose against her own father. Therefore the conclusion of the trial Court that the deceased consumed the liquor in the fateful night at the residence of the accused is correct and stands proved on the basis of the evidence of PW-13 Dhan Bai.

10. Now coming to the question whether the accused mixed poison in the water and that water was mixed with the liquor is concerned, PW-13 Dhan Bai and the accused have denied this fact, therefore, there is no direct evidence on this point. As such only we have to look into the circumstantial evidence leading to the poisoning of the deceased. As per the evidence, after consuming the liquor at the residence of accused the deceased went to his house and thereafter in the early morning at about 4:00 a.m. his condition became precarious. Then he was taken to the Durg hospital where he was declared dead. PW-6 Ramsharan has deposed that at 5:00 a.m. the daughter of deceased Manisha came to him and informed about the condition of Brijlal on which he went to the house of Brijlal and he saw that Brijlal was lying on the ground. He called the persons of vicinity and arranged the vehicle and sent Brijlal to hospital. PW-4 Manisha has deposed that her father came to the house in the fateful night without taking food he had gone for sleep and in the morning when the condition of her father became precarious, she went to Ramsharan and thereafter her

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father was taken to the hospital. This fact has also been proved by PW-3 Sagar. PW-1 Dhansai has also deposed that on coming to know about the condition of Brijlal he went to his house, he had taken Brijlal to hospital on a truck and there the doctor declared him dead. The viscera were preserved which were taken from his body at the time of the postmortem by Dr. Ashok Soni, PW-8 and as per the report, Ex.-P/21, those viscera were found containing Rogor (organo phosphorous) insecticide and ethyl alcohol.

11. The trial Court has also considered other factor that Dhan Bai after coming to know on 2nd April 2001 through newspaper that Brijlal has died in the hospital also consumed poison and her condition became precarious, she was admitted to the hospital, she remained in the hospital for 2, 3 days. PW-8 Dr. Ashok Soni, the same doctor who conducted postmortem of the dead body of deceased Brijlal treated her and stated that he examined Dhan Bai. She was unconscious. The pulse rate was 100 and the blood pressure was 130/80 and she was sweating and her eyes were squeezed and in the opinion of the doctor condition of Dhan Bai became precarious on account of the consumption of the organo phosphorous insecticide and for this the report is Ex.-P/13. A perusal of the report Ex.-P/13 which was prepared by the doctor on 2nd April 2001 at 9:40 p.m., shows that Dhan Bai consumed oregano phosphorous poison. This instance lends support to the prosecution story that Dhan Bai had relations with the deceased and that ultimately became the motive for the accused for committing this heinous crime. Even though other witnesses have said that they have no knowledge about the relation between Dhan Bai and

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the deceased, Manisha (P.W.4) has stated that Dhan Bai used to come to their house.

12. The learned counsel for the accused / appellant argued that though the sample of the poison was taken at the instance of the accused, the report of chemical examination of the same has not been produced. Similarly vomit of Dhan Bai was not preserved and merely on the visual examination it cannot be said that Dhan Bai consumed insecticide. It is true that the chemical examination report of the sample has not been produced nor the vomit of Dhan Bai was sent for chemical examination. As the recovery at the instance of accused was almost after a month, not much value can be attached to the same. Even otherwise, these tests were required to be conducted to show that the material was poison. But even if the chemical examination report has not been produced by the prosecution that does not itself falsifies the prosecution case, if it stands proved by the other reliable, convincing and legal circumstantial evidence. As has mentioned above that report is just to support the case of the prosecution. In absence of that report if other legal convincing evidence is available then the offence can be treated to have been proved on the basis of the same.

13. There is evidence produced by the prosecution that the deceased after consuming liquor directly went to his house and as per the evidence of Manisha PW-4 the deceased had not taken anything and he had gone to sleep directly and thereafter in the morning his condition became precarious. He was taken to the hospital where he was declared dead. The doctor preserved the viscera and as per the

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report Ex.-P/21 those viscera were found containing poison / insecticide. The same day when Dhan Bai came to know about the death of deceased Brijlal Kewat she also consumed that liquid and her condition also became serious and she was taken to the hospital where she was kept for 2, 3 days and the doctor PW-8 Ashok Soni has stated that he examined Dhan Bai and in his opinion, she consumed organo phosphorous poison, the same substance which was found in the viscera of the deceased. Even though Dhan Bai has tried to explain that she consumed that liquid thinking that the same was sweet beverage and she had not consumed it for committing suicide, the fact remains that some poisonous substance was present in the house of the accused and on coming to know that Brijlal has died Dhan Bai also consumed that substance and her condition became precarious and she was taken to the hospital.

14. It has not come in the evidence that the liquid which Dhan Bai consumed was brought by her from any place outside. Dhan Bai and the accused both have admitted that Dhan Bai consumed poison and thereafter her condition became precarious. Therefore, from these circumstances it stands proved that the deceased consumed liquor at the residence of the accused in the night of 1st April 2001 and in the morning of 2nd April 2001 he died. Dhan Bai daughter of the accused took the liquid and as per the opinion of the doctor that was poison.

15. The circumstantial evidence produced in this case by the prosecution stand up to the tests laid down by the Hon'ble Apex Court as mentioned above, and only the irresistible inference can be drawn from the circumstantial evidence that the accused is the only person

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who administered poison to the deceased and there is no possibility which exclude the involvement of the accused in the heinous crime. In view of the above it stands proved that the accused administered poison namely Rogor (organo phosphorous) insecticide by mixing the same in the water and then mixing the said water in the liquor and offering the same to the deceased to consume.

16. Now coming to the statement of Manisha which was recorded by the police after 10 months of the incident in which she has stated that the deceased told her that he has consumed liquor at the residence of the accused and the accused has administered the poison in the liquor, this statement was recorded at a belated stage after 10 months of the incident. The Investigating Officer was knowing that Manisha was present in the house. It is not known why her statement was not recorded on 2nd April 2001 itself or thereafter at the earliest possible, about the fact that the deceased made dying declaration before his daughter that the accused has administered the poison to him. Therefore this part of the evidence has not been able to stand up to the test or is of worth reliance or inspiring confidence of the Court.

17. In the result, we do not find any illegality or infirmity in the judgment of the trial Court. The same is based on the sound reasoning and on the legal convincing evidence. The conviction and sentence passed by the trial court is affirmed. Accordingly, the appeal is liable to be dismissed and it is dismissed.

Sd/-
Chief Justice

Sd/-
L.C.BHADOO
Judge

Ajit Barve